

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOSHUA D. LAMBERT,

Plaintiff,

v.

CHIEF WILLIAM DENNIS, et al.,

Defendants.

CASE NO. C15-1213-RSM-MAT

ORDER RE: PENDING MOTIONS

Plaintiff Joshua Lambert proceeds *pro se* and *in forma pauperis* (IFP) in this civil rights action pursuant to 42 U.S.C. § 1983. There are numerous motions pending before the Court. Having considered those motions, any papers filed in opposition, and the remainder of the record, the Court finds and concludes as follows:

(1) Plaintiff filed a Motion for Leave to Amend his Authentication of his Grievances (Dkt. 67), followed shortly thereafter by a Motion to Withdraw and/or Strike [the Motion to Amend] (Dkt. 70). In the latter, plaintiff states he wishes to withdraw the motion for leave to amend “because if summary judgment is granted I wish to write a motion to amend regarding everything stated in that order[,]” and because he wrote it “in haste” and wanted to change his argument. (Dkt. 70 at 1-2.) Plaintiff’s motion to withdraw and/or strike (Dkt. 70) is GRANTED

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1 and the motion to amend (Dkt. 67) is STRICKEN from the docket. The Court, however, advises  
2 plaintiff that the content of and attachments to the motion to amend may nonetheless be  
3 considered in relation to any dispositive motions filed in this matter.

4 (2) Plaintiff filed a Motion to Give [him] Access to his Legal Records (Dkt. 72) and a  
5 Motion to Order [Washington State Penitentiary (WSP)] to Allow Plaintiff Access to Audio  
6 Recordings (Dkt. 73). In the first motion, plaintiff asks that the Court order WSP to allow him  
7 five hours to go through twenty-five boxes of legal materials, which would be brought to the  
8 prison by his Mother. He also asks that WSP staff be allowed to search the records for  
9 contraband, but not to photocopy, read, or disclose the contents of the records to anyone. In the  
10 second motion, plaintiff states that WSP requires all audio recordings to be mailed from a court,  
11 and asks that this Court direct WSP to allow him to have audio recordings mailed to him by his  
12 Mother.

13 These motions, like others before them (*see* Dkts. 62, 68 & 75), request that the Court  
14 order WSP to take action or accommodate plaintiff in some way. Because WSP is not a party to  
15 this matter, the Court lacks jurisdiction to direct WSP to act or accommodate plaintiff as he  
16 requests. Accordingly, plaintiff's motions regarding access to his legal records (Dkt. 72) and  
17 audio recordings (Dkt. 73) are DENIED. **The Court further directs plaintiff to abstain from**  
18 **filing similar motions in the future. Should he file any such motion, it will be stricken from**  
19 **the docket.**

20 (3) Plaintiff filed a Motion to Extend Discovery (Dkt. 71) and Motion to Order  
21 Defendant Dennis to Answer Extra Interrogatories (Dkt. 80). He requests the extension in order  
22 to acquire the records in his Mother's possession and to obtain an expert report, and, after  
23 unsuccessfully seeking a stipulation from Dennis, seeks answers to sixteen interrogatories above

1 the amount allowed by the Federal Rules of Civil Procedure.

2 Plaintiff has had ample time, including two extensions (*see* Dkts. 25 & 29), to obtain  
3 discovery from Dennis. He has had over two-and-a-half years, since September 2013 (*see* Dkt.  
4 44-9), to obtain documents from his Mother. However, with consideration of plaintiff's *pro se*  
5 status and in the interest of ensuring he be provided a full and fair opportunity to obtain  
6 information, documents, and an expert report, the Court GRANTS in part and DENIES in part  
7 the motion for an extension (Dkt. 71) and motion for extra interrogatories (Dkt. 80). The  
8 discovery deadline is extended as to Dennis for the limited purpose of allowing a total of **ten**  
9 **(10)** additional interrogatories. Plaintiff is also afforded additional time to seek discovery from  
10 defendant Island County, and to continue his efforts to obtain documents from his Mother and an  
11 expert report.

12 The discovery deadline is herein extended, within the parameters described above, to  
13 **June 1, 2016**, and the dispositive motion deadline is extended to **July 1, 2016**. **Plaintiff is**  
14 **advised that no further extensions of the discovery or dispositive motion deadlines will be**  
15 **granted in this matter.**

16 (4) Plaintiff's Motion for Disclosure of Witnesses (Dkt. 79) is DENIED as premature.

17 (5) The docket also includes a Motion to Allow Plaintiff to Make an Amendment to  
18 his Second Amended Complaint and to Enter a Stay. (Dkt. 77.) He requests an amendment  
19 regarding and a stay on the Court's consideration of his claim that Dennis's confiscation of his  
20 legal materials violated his constitutional right of access to the courts. Plaintiff asserts that,  
21 because he maintains the "actual injury" he incurred was the loss of his criminal trial, this claim  
22 is barred and does not accrue until his criminal conviction is overturned. *Heck v. Humphrey*, 512  
23 U.S. 477, 479 (1994) (where a § 1983 action implies the invalidity of a criminal conviction or

1 sentence, the action may not proceed unless plaintiff first succeeds in overturning the underlying  
2 conviction or sentence through direct appeal or a post-conviction type of proceeding). The  
3 remainder of plaintiff's motion and proposed amendment addresses his desire that Dennis be  
4 required to pay for an attorney, investigator, or paralegal to bring the twenty-five boxes of legal  
5 materials to WSP, and that his Mother be paid for the time she has spent searching for  
6 documents.

7 Pursuant to *Heck v. Murphy*, a civil rights complaint under § 1983 cannot proceed when  
8 "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or  
9 sentence; if it would, the complaint *must* be dismissed unless the plaintiff can demonstrate that  
10 the conviction or sentence has already been invalidated." *Heck*, 512 U.S. at 487 (emphasis  
11 added). Because plaintiff seeks only a stay on the Court's consideration of this claim, rather than  
12 dismissal, his motion for an amendment and stay (Dkt. 77) is DENIED. Plaintiff may, however,  
13 submit a motion to dismiss his access to courts claim without prejudice to his future pursuit of  
14 such a claim following a successful invalidation of his conviction. *See Trimble v. City of Santa*  
15 *Rosa*, 49 F.3d 583, 585 (9th Cir. 1995) (per curiam) (dismissal under *Heck* "required to be  
16 without prejudice so that Trimble may reassert his claims if he ever succeeds in invalidating his  
17 conviction.") The Court will otherwise address plaintiff's access to courts claim, and any bar  
18 pursuant to *Heck*, in relation to summary judgment.

19 (6) The Court further finds it prudent to STRIKE the noting date of the pending  
20 Motion for Summary Judgment filed by Dennis (Dkt. 29) so that the motion may be considered  
21 following the completion of discovery and in conjunction with any additional dispositive  
22 motion(s) that may be filed. The Court will re-note the motion to coincide with either another  
23 dispositive motion or the dispositive motion deadline itself.

1 (7) The Clerk is directed to send a copy of this Order to the parties and to the  
2 Honorable Ricardo S. Martinez.

3 DATED this 9th day of May, 2016.

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6 Mary Alice Theiler  
7 United States Magistrate Judge  
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